

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ORLANDIS PRANTEZ WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

March 20, 2012

No. 301659

Wayne Circuit Court

LC No. 10-006497-FC

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and felonious assault, MCL 750.82. He was sentenced to concurrent prison terms of 57 months to 10 years for the assault with intent to do great bodily harm conviction and 23 months to 4 years for the felonious assault conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the June 5, 2010 stabbing assault of Kenneth Bonds during a party at defendant's mother-in-law's home in Detroit. It was the prosecution's theory that defendant became argumentative and aggressive before the stabbing, was warned by others to calm down, and was asked to leave the party. Evidence was presented that defendant became upset after Bonds, who defendant did not consider to be a family member, told defendant to calm down. After a brief exchange with another person, defendant went outside, obtained a knife from a bowl on a table, forcibly pushed his way back through the door, and stabbed Bonds in the chest, leaving the knife in his body. The defense theory at trial was that defendant acted in self-defense. Defendant testified that he was forced outside by five male family members, including Bonds, and was attacked by the group. Defendant claimed that as he was on the ground being punched and kicked, he bumped into the knife, picked it up, swung it without direction while still on the ground, and ran when he had the opportunity. Defendant denied intentionally aiming the knife at Bonds or anyone else.

I. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the evidence was insufficient to convict him of assault with intent to do great bodily harm less than murder and felonious assault because his version of the events was more credible than that of the witnesses who testified for the prosecution.

When ascertaining whether sufficient evidence to support a conviction was presented at trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

At trial, the prosecution presented three eyewitnesses—Bonds, Rajene Reynolds, and Charles Cotton—who testified that defendant forcibly pushed his way through a back door and stabbed the unarmed Bonds in the chest, leaving the knife in his body. Reynolds testified that before the stabbing, defendant went outside onto the deck, took a knife from a bowl on a table, and walked quickly and aggressively back toward the door as she frantically tried to lock him out of the house. The testimony of the prosecution witnesses, if believed, was sufficient to establish all elements of the charged crimes.¹ Although defendant argues that the prosecution witnesses were not credible, this challenge is related to the weight rather than the sufficiency of the evidence. *People v Sharbnaw*, 174 Mich App 94, 105; 435 NW2d 772 (1989). This Court will not interfere with the jury’s role of determining issues of weight and credibility. *Wolfe*, 440 Mich at 514. Rather, this Court must draw all reasonable inferences and make credibility choices in support of the jury’s verdict. *Nowack*, 462 Mich at 400. Viewed in this manner, the evidence was sufficient to support defendant’s convictions of assault with intent to do great bodily harm less than murder and felonious assault.

II. THE PROSECUTOR’S CONDUCT

Defendant next argues that he was denied a fair trial by the prosecutor’s conduct of (1) playing only excerpts of recorded jail conversations between defendant and his wife for purposes of impeachment during the cross-examination of defendant’s wife, and (2) vouching for the prosecution witnesses during rebuttal argument and arguing that the defense witnesses were untruthful. We disagree. Defendant objected to the prosecutor playing only portions of the jail recordings. Therefore, that claim is preserved for appellate review. Defendant did not object to the prosecutor’s rebuttal argument, leaving that issue unpreserved.

We review a preserved claim of prosecutorial misconduct case by case, examining the challenged conduct in context to determine whether the defendant received a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995); *People v Rodriguez*,

¹ “Assault with intent to commit great bodily harm less than murder requires proof of (1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The elements of felonious assault are “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Chambers*, 277 Mich App 1, 8; 742 NW2d 610 (2007).

251 Mich App 10, 29-30; 650 NW2d 96 (2002). We review an unpreserved claim of prosecutorial misconduct for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999). We will not reverse if the alleged prejudicial effect of the prosecutor's conduct could have been cured by a timely instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

A. JAIL RECORDINGS

During the prosecutor's cross-examination of defendant's wife, the prosecutor offered portions of recorded jail conversations between defendant and his wife to impeach defendant's wife's trial testimony. Defendant does not contend that the portions offered by the prosecutor were not relevant or admissible for that purpose, but instead argues that the prosecutor should have presented the recorded conversations in their entirety to provide context. However, the trial court specifically permitted the prosecutor to offer only those portions that were relevant for impeachment, and ruled that defendant could introduce any additional portions on redirect examination. Because the prosecutor's presentation of the evidence was approved by the trial court, it does not constitute misconduct. "[A] prosecutor's good-faith effort to admit evidence does not constitute misconduct." *People v Dobek*, 274 Mich App 58, 72; 732 NW2d 546 (2007). Further, because the trial court gave defense counsel the opportunity to play additional portions of the jail recordings on redirect examination, there is no basis for defendant's claim that he was prejudiced because the jury was only permitted to hear the portions that were pertinent to the prosecutor's cross-examination of defendant's wife.

B. REBUTTAL ARGUMENT

A prosecutor may not vouch for the credibility of a witness by conveying that she has some special knowledge that the witness is testifying truthfully. *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). However, prosecutors are afforded great latitude when arguing at trial. *People v Fyda*, 288 Mich App 446, 461; 793 NW2d 712 (2010). They may argue the evidence and all reasonable inferences that arise from the evidence as it relates to their theory of the case, including that a witness is not worthy of belief, and they are not required to state their inferences in the blandest possible language. *Dobek*, 274 Mich App at 66; *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996), overruled in part on other grounds in *People v Houthoofd*, 487 Mich 568, 583; 790 NW2d 315 (2010).

Viewed in context, the prosecutor's rebuttal argument did not suggest that she had special knowledge that the prosecution witnesses were credible. The challenged remarks were part of a permissible argument regarding credibility that was focused on countering defendant's claim during closing argument that he was the actual victim, and providing reasons why his claim of self-defense should not be believed. In closing, defense counsel reiterated that defendant was jumped, punched, and kicked by five male family members, and swung the knife in self-defense. Counsel argued that, after the stabbing, defendant ran to a public place to obtain help and call the police. Defense counsel asserted that Bonds' testimony was inconsistent and illogical, that Reynolds "seemed to have a much better recollection at trial" than previously, and stated, "Their version, you know, we come here with the ability to lie." During the challenged remarks, the prosecutor urged the jury to evaluate the evidence, discussed the unreliability of defendant's and his wife's testimony, and argued that there were reasons from the evidence to conclude that the

defense version was not credible. The prosecutor remarked that defendant acknowledged that after fleeing the scene, he did not call the police or ask the gas station attendant to use the phone. The prosecutor noted that defendant's wife's testimony was impeached several times with jail recordings of conversations between her and defendant. The prosecutor also discussed how the defense claim "doesn't add up" with the evidence. The prosecutor's argument was responsive to the evidence and the theories presented at trial and, viewed in context, was not clearly improper.

Further, a timely objection to the challenged argument could have cured any perceived prejudice by obtaining an appropriate cautionary instruction. See *Watson*, 245 Mich App at 586. Indeed, even though defendant did not object, the trial court instructed the jury that the lawyers' statements and arguments are not evidence, that it was to decide the case based only on the properly admitted evidence, and that it was to follow the court's instructions. The instructions were sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001).

In a related claim, defendant argues that defense counsel was ineffective for failing to object to the prosecutor's rebuttal argument. Because defendant failed to raise an ineffective assistance of counsel claim in the trial court in connection with a motion for a new trial or request for an evidentiary hearing, our review of this claim is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Effective assistance of counsel is presumed and defendant bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, defendant must show that counsel's performance was below an objective standard of reasonableness and that it is "reasonably probable that the results of the proceeding would have been different had it not been for counsel's error." *People v Frazier*, 478 Mich 231, 243; 733 NW2d 713 (2007).

In this case, because the prosecutor's rebuttal argument was not improper, defense counsel's failure to object was not objectively unreasonable. Further, because the trial court's jury instructions were sufficient to dispel any possible prejudice, defendant cannot demonstrate that there is a reasonable probability that, but for counsel's failure to object, the result of the proceeding would have been different. Consequently, defendant's ineffective assistance of counsel claim cannot succeed.

III. TRIAL COURT'S CONDUCT

Defendant also argues that the trial court denied him a fair trial and violated his right to due process by excessively interfering with the questioning of witnesses and disparaging defense counsel. We disagree. Because defendant did not object to the trial court's conduct, we review this unpreserved claim for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763.

It is well established that a trial court has a duty to control trial proceedings in the courtroom, and has wide discretion and power in fulfilling that duty. *People v Conley*, 270 Mich App 301, 307; 715 NW2d 377 (2006). But a court's conduct may not pierce the veil of judicial impartiality. *Id.* at 308. While a defendant's constitutional right to confront his accusers is

secured by the right to cross-examination guaranteed by the Confrontation Clause, US Const, Am VI; Const 1963, art 1 § 20, a court has latitude to impose reasonable limits on cross-examination, *People v Sexton*, 250 Mich App 211, 221; 646 NW2d 875 (2002), and must “exercise reasonable control over the mode . . . of interrogating witnesses” for purposes including “avoid[ing] needless consumption of time.” MRE 611(a). The test to determine whether the trial court pierced the veil of judicial impartiality is whether the trial court’s remarks or conduct “were of such a nature as to unduly influence the jury and thereby deprive the appellant of his right to a fair and impartial trial.” *Conley*, 270 Mich App at 308 (citations omitted).

In this case, during defense counsel’s cross-examination of Reynolds, the following exchange occurred:

Q. Well, you testified at the preliminary exam that you didn’t know who it was.

The court: She said the same thing, according to what you read.

We’ve got to move on.

Defense counsel: Okay.

The court: All right.

I’m going to put a time limit on this cross-examination, so you’d better get the information that you need to get to the jury to argue this case.

Defense counsel: Okay.

The court: Because this is taking too long.

Later, during defense counsel’s redirect examination of defendant’s wife, the following exchange occurred:

Q. Okay. Did you ever give a statement to the police before, in writing?

A. No.

The court: Why are we going into that?

Defense counsel: Only because the Prosecutor raised the question about the statement.

The court: No, no. She didn’t see it, so—

Defense counsel: Okay. That’s what I’m asking—

The court: What it is, the bottom line is that she didn’t see it.

Defense counsel: I understand that Your Honor. But there's—

The court: So, let's wrap this testimony up.

Defense counsel: Okay.

The trial court's remarks were not of such a nature as to unduly influence the jury. The trial court appropriately exercised its discretion to control the trial to prevent excessive and repetitive questioning of witnesses. At the point when the trial court intervened, defense counsel had addressed Reynolds' direct examination testimony in depth. Before Reynolds' testimony, defense counsel had similarly engaged in a lengthy cross-examination of Bonds. In both instances, defense counsel's cross-examination well exceeded the length of the witnesses' direct examination testimony. Similarly, when the trial court commented during defendant's wife's redirect examination testimony, the matter of her police statement had already been amply addressed. The trial court's remarks were not calculated to cause the jury to believe that the court had any opinion regarding the case, nor were they specifically disapproving of the defense or defense counsel. In fact, during rebuttal argument, the court also interrupted the prosecutor when her argument became excessive. The trial court explained to the jury that it had a responsibility to ensure that the trial was run efficiently and fairly. The court twice instructed the jury that its comments are not evidence, that it was not trying to influence the vote or express a personal opinion about the case when it made a comment, and that if the jury believed that the court had an opinion, that opinion must be disregarded. Jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Defendant has not demonstrated that the trial court's conduct or comments were prejudicial.

For the same reasons, we reject defendant's alternative ineffective assistance of counsel claim. Because the trial court's conduct and comments did not deny defendant a fair trial, defense counsel's failure to object was not objectively unreasonable. Further, the trial court's jury instructions were sufficient to dispel any possible prejudice. Accordingly, defendant cannot demonstrate a reasonable probability that the result of the proceeding would have been different had defense counsel objected.

IV. RIGHT TO PRESENT A DEFENSE

Defendant also argues that the trial court denied him his right to present a defense when it denied his request to play the jail recordings in their entirety during the prosecutor's cross-examination of defendant's wife. Again, we disagree. Although defendant requested that the conversations be played in their entirety, he did not contend that doing so was necessary to preserve his constitutional right to present a defense. An objection on one ground is insufficient to preserve an appellate challenge based on a different ground. *People v Bulmer*, 256 Mich App 33, 35; 662 NW2d 117 (2003). Thus, defendant's constitutional claim is not preserved and our review of this issue is limited to plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763-764.

Although a defendant has a constitutional right to present a defense, US Const, Am VI; Const 1963, art 1 § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993), he must still comply with procedural and evidentiary rules established to assure fairness and

reliability in the verdict. See *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984); *People v Arenda*, 416 Mich 1, 8; 330 NW2d 814 (1982). In this case, the trial court did not preclude defendant from presenting the recorded conversations in their entirety, but rather merely denied his request to do so during the prosecutor's cross-examination of his wife. As discussed in section II(A), the prosecutor presented the portions of the recorded conversations that were directly relevant to the portions of defendant's wife's testimony that the prosecutor sought to impeach. The trial court permitted defense counsel to "cover" additional portions of the conversations during counsel's redirect examination. Defendant does not explain how the trial court's ruling precluded him from presenting a claim of self-defense. We find no merit to defendant's claim that his right to present a defense was violated.

V. RESENTENCING

Defendant lastly argues that he is entitled to resentencing because the trial court relied on inaccurate information at sentencing. We disagree. Because defendant did not challenge the accuracy of the trial court's statement at sentencing, this issue is unpreserved and we review this unpreserved claim for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

Defendant's sentences for assault with intent to do great bodily harm less than murder and felonious assault are within the respective sentencing guidelines ranges of 29 to 57 months and 10 to 23 months. This Court must affirm a sentence within the guidelines range absent an error in the scoring of the guidelines or reliance on inaccurate information "*in determining the defendant's sentence.*" MCL 769.34(10); *People v Kimble*, 470 Mich 305, 310-311; 684 NW2d 669 (2004). Defendant does not argue that the guidelines were erroneously scored. Although he contends that the trial court relied on inaccurate information, he relies only on an apparent misstatement that occurred in the context of a colloquy between defendant and the trial court concerning defendant's method of responding to volatile situations. The trial court commented that "sometimes you have to just walk away" and, in reference to the offenses at issue, remarked that defendant could have gotten in his car and driven back to Toledo to avoid the situation. Although it appears that the trial court mistakenly believed that defendant had a car available to him on the night of the offense, it is clear from the record that this misstatement had no effect on defendant's sentences. The fleeting misstatement was not offered as an explanation or justification for defendant's sentences. Rather, the trial court made it clear that it was relying on defendant's extensive 15-year history of assaultive offenses as justification for the sentences imposed. Under these circumstances, resentencing is not required.

We also reject defendant's alternative ineffective assistance of counsel claim. Because the record shows that defendant's 57-month and 23-month minimum sentences were based on his extensive assaultive criminal history, he cannot demonstrate a reasonable probability that, but for counsel's failure to correct the court's misstatement, the result of the proceeding would have been different.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad